

# **THIRD JUDICIAL DISTRICT OAWI SENTENCING GUIDELINES**

**FOR CITATIONS ISSUED ON OR AFTER**

**July 27, 2005**

THIRD JUDICIAL DISTRICT  
515 W. Moreland Blvd.  
Waukesha, WI 53188-2428  
(262) 548-7210

HON. KATHRYN W. FOSTER  
Chief Judge

MICHAEL G. NEIMON  
District Court Administrator

DISTRICT OAWI SENTENCING GUIDELINES COMMITTEE:

HON. JOHN M. ULLSVIK, Jefferson Co.  
HON. DAVID C. RESHESKE, Washington Co.  
HON. JAMES R. KIEFFER, Waukesha Co.  
HON. TOM R. WOLFGRAM, Ozaukee Co., Chairperson

**Modifications: Per the 2005 Budget Act, the following changes have been made to the District 3 guidelines:**

- The penalty surcharge increased from 24% to 25%
- Victim-Witness Surcharge A changed from \$30 to \$40 for misdemeanors and \$40 to \$65 for felonies.
- The Justice Information Service Fee increased from \$9 to \$12
- The Crime Lab. & Drug Assessment fee increased from \$7 to \$8
- Assessment wording (Penalty, Jail, Crime Lab. & Drug) changed to "surcharge"
- 1% jail surcharge calculation for fines/forfeitures \$1,000 or greater was implemented. This was a calculation that was supposed to be done to prior guidelines in accordance with Wisconsin Statute 302.46(1)(a).
- New "\*\*\*\*" language was added for 4<sup>th</sup> and 5<sup>th</sup> offenses

**SENTENCE OPTIONS/ALTERNATIVES**

Alcohol Assessment and Driver Safety Plan. (All offenses)

- Court may order the safety plan to include effect on any victim or victim's family. **(All offenses)**
- Court may order community service work that demonstrates adverse effects of abuse (and a reasonable fee). **(All offenses)**
- Court may order a visit to a site that demonstrates adverse effects of abuse (and a reasonable fee). **(All offenses)**
- Court must order community service to pay off fine, if a finding is made that there is an inability to pay.
- Court may also order restitution. **(All offenses)**
- Court may, after a finding of inability to pay, reduce the costs or forfeiture and order the person to pay the difference toward the cost of the alcohol assessment and driver safety plan. **(All offenses)**

**IMMOBILIZATION OR IGNITION INTERLOCK OF OWNED VEHICLE 2nd offense or greater**

(Unless undue hardship, extreme inconvenience or endangerment of person's health and safety)

Court may order a motor vehicle owned and operated by a violator to be seized and forfeited. **(3rd offense and above only)**

\*\*\*\*\*

**MITIGATING AND AGGRAVATING FACTORS IN SENTENCING**

**MITIGATING FACTORS:**

- \*Age of prior OAWI/BAC Offense/Conviction
- \*Pre-Conviction Assessment and Treatment
- \*Good Driving Record; \*Minimal Poor Driving
- \*Cooperation With Authorities; \*Positive Attitude/Steps Toward Problem Recognition
- \*Blood Test Taken with Refusal

**AGGRAVATING FACTORS:**

- \*Poor Driving; \*Accident or Injury Involved; \*Poor Prior Driving Record; \*Lack of Remorse
- \*Recent Prior OAWI/BAC Offense/Conviction
- \*Operating Without Valid Driving Privileges (i.e. OAR, OAS, OWL, HTO)
- \*Circumstances of Consumption (Binge Drinking, Amount Consumed, Medication Use, etc.)
- \*Poor/Limited Problem Recognition as Evidenced by Prior Treatment History or Lack Thereof
- \*Uncooperative/Belligerent/Violent Toward Arresting Officer
- \*Prior Uncounted Offenses for OAWI/BAC
- \*For 3rd Plus Offenses: Previously Uncounted Offenses from January 1, 1988, per (1993 Wisconsin Act 317, Effective April 30, 1994)
- \*Combination of alcohol and controlled substance use

**OAWI SENTENCING GUIDELINES**  
Third Judicial District

**FIRST OFFENSE**

**Mitigating Factors**

<b>Bac Level</b>	<b>.08 &lt; .10 (Alcohol only)</b>	<b>.08 &lt; .10 (Alcohol &amp; Drug)</b>	<b>.10 to .149</b>	<b>.15 to .199</b>	<b>.20 to .249</b>	<b>.25 and above or refusal</b>
Forfeiture	250.00	150.00	150.00	200.00	250.00	250.00
Penalty Surcharge (25%)		37.50	37.50	50.00	62.50	62.50
Jail Surcharge		10.00	10.00	10.00	10.00	10.00
Justice Information Service Fee		12.00	12.00	12.00	12.00	12.00
Court Support Services Fee		68.00	68.00	68.00	68.00	68.00
Court Costs		25.00	25.00	25.00	25.00	25.00
Driver Improvement Surcharge		355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge		8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$250.00</b>	<b>\$665.50</b>	<b>\$665.50</b>	<b>\$728.00</b>	<b>\$790.50</b>	<b>\$790.50</b>
Revocation	6 months	6 months	6 months	7 months	8 months	9 months

**Aggravating Factors**

<b>Bac Level</b>	<b>.08 &lt; .10 (Alcohol only)</b>	<b>.08 &lt; .10 (Alcohol &amp; Drug)</b>	<b>.10 to .149</b>	<b>.15 to .199</b>	<b>.20 to .249</b>	<b>.25 and above or refusal</b>
Forfeiture	300.00	200.00	200.00	250.00	300.00	300.00
Penalty Surcharge (25%)		50.00	50.00	62.50	75.00	75.00
Jail Surcharge		10.00	10.00	10.00	10.00	10.00
Justice Information Service Fee		12.00	12.00	12.00	12.00	12.00
Court Support Services Fee		68.00	68.00	68.00	68.00	68.00
Court Costs		25.00	25.00	25.00	25.00	25.00
Driver Improvement Surcharge		355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge		8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$300</b>	<b>\$728.00</b>	<b>\$728.00</b>	<b>\$790.50</b>	<b>\$853.00</b>	<b>\$853.00</b>
Revocation	7 months	7 months	7 months	8 months	9 months	9 months

**OAWI SENTENCING GUIDELINES**

Third Judicial District

**SECOND OFFENSE****Mitigating Factors**

<b>Bac Level</b>	<b>.08 to .149</b>	<b>.15 to .199</b>	<b>.20 to .249</b>	<b>.25 and above or refusal</b>
Fine	350.00	400.00	450.00	500.00
Penalty Surcharge (25%)	87.50	100.00	112.50	125.00
Jail Surcharge	10.00	10.00	10.00	10.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$890.50</b>	<b>\$953.00</b>	<b>\$1,015.50</b>	<b>\$1,078.00</b>
Jail	5-30 days	10-60 days	20-90 days	90-180 days
Revocation	12 months	14 months	16 months	18 months

**Aggravating Factors**

<b>Bac Level</b>	<b>.08 to .149</b>	<b>.15 to .199</b>	<b>.20 to .249</b>	<b>.25 and above or refusal</b>
Fine	400.00	450.00	500.00	550.00
Penalty Surcharge (25%)	100.00	112.50	125.00	137.50
Jail Surcharge	10.00	10.00	10.00	10.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$953.00</b>	<b>\$1,015.50</b>	<b>\$1,078.00</b>	<b>\$1,140.50</b>
Jail	30-60 days	60-90 days	90-180 days	120-180 days
Revocation	14 months	16 months	18 months	18 months

**OAWI SENTENCING GUIDELINES**  
Third Judicial District

**THIRD OFFENSE**

**Mitigating Factors**

<b>Bac Level</b>	<b>.08 to .169</b>	<b>.17 to .199</b>	<b>.20 to .249</b>	<b>.25 and above or refusal</b>
Fine	600.00	1200.00	1800.00	2400.00
Penalty Surcharge (25%)	150.00	300.00	450.00	600.00
Jail Surcharge	10.00	12.00	18.00	24.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$1,203.00</b>	<b>\$1,955.00</b>	<b>\$2,711.00</b>	<b>\$3,467.00</b>
Jail	30 days -5 months	45 days - 6 months	3-7 months	4-9 months
Revocation	24 months	27 months	30 months	33 months

**Aggravating Factors**

<b>Bac Level</b>	<b>.08 to .169</b>	<b>.17 to .199</b>	<b>.20 to .249</b>	<b>.25 and above or refusal</b>
Fine	650.00	1300.00	1950.00	2600.00
Penalty Surcharge (25%)	162.50	325.00	487.50	650.00
Jail Surcharge	10.00	13.00	19.50	26.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$1,265.50</b>	<b>\$2,081.00</b>	<b>\$2,900.00</b>	<b>\$3,719.00</b>
Jail	45 days -6 months	4-8 months	7 mo.-1 yr.	9 mo.-1 yr.
Revocation	27 months	30 months	33 months	36 months

**OAWI SENTENCING GUIDELINES**

Third Judicial District

**FOURTH OFFENSE****Mitigating Factors**

<b>Bac Level</b>	<b>.02 to .079</b>	<b>.08 - .169</b>	<b>.17 - .199</b>	<b>.20 to .249</b>	<b>.25 and above or refusal</b>
Fine	650.00	750.00	1500.00	2250.00	3000.00
Penalty Surcharge (25%)	162.50	187.50	375.00	562.50	750.00
Jail Surcharge	10.00	10.00	15.00	22.50	30.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$1,265.50</b>	<b>\$1,390.50</b>	<b>\$2,333.00</b>	<b>\$3,278.00</b>	<b>\$4,223.00</b>
Jail	2 mo.-1yr.	3 mo.-1yr.	4 mo.-1yr.	6 mo.-1yr.	7 mo.-1yr.
Revocation	24 months	24 months	27 months	33 months	36 months

\*If the defendant is placed on probation you must impose at least the minimum mandatory period of confinement as a condition of probation, and the defendant is eligible to receive good time under Sec. 302.43. See 973.09(1)(d).

**Aggravating Factors**

<b>Bac Level</b>	<b>.02 to .079</b>	<b>.08 - .169</b>	<b>.17 - .199</b>	<b>.20 to .249</b>	<b>.25 and above or refusal</b>
Fine	900.00	1000.00	2000.00	3000.00	4000.00
Penalty Surcharge (25%)	225.00	250.00	500.00	750.00	1000.00
Jail Surcharge	10.00	10.00	20.00	30.00	40.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$1,578.00</b>	<b>\$1,703.00</b>	<b>\$2,963.00</b>	<b>\$4,223.00</b>	<b>\$5,483.00</b>
Jail	5 mo.-1yr.	7 mo.-1yr.	9 mo.-1yr.	10 mo.-1yr.	10 mo.-1yr.
Revocation	27 months	33 months	36 months	36 months	36 months

\*If the defendant is placed on probation you must impose at least the minimum mandatory period of confinement as a condition of probation, and the defendant is eligible to receive good time under Sec. 302.43. See 973.09(1)(d).

**OAWI SENTENCING GUIDELINES**

Third Judicial District

**FIFTH OR SUBSEQUENT OFFENSE****Mitigating Factors**

<b>Bac Level</b>	<b>.02 to .079</b>	<b>.08 - .169</b>	<b>.17 - .199</b>	<b>.20 to .249</b>	<b>.25 and above or refusal</b>
Fine	1200.00	1500.00	3000.00	4500.00	6000.00
Penalty Surcharge (25%)	300.00	375.00	750.00	1125.00	1500.00
Jail Surcharge	12.00	15.00	30.00	45.00	60.00
Victim-Witness Surcharge A	65.00	65.00	65.00	65.00	65.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$1,980.00</b>	<b>\$2,358.00</b>	<b>\$4,248.00</b>	<b>\$6,138.00</b>	<b>\$8,028.00</b>
Jail	6 months -6 yrs	1-6 yrs	1-6 yrs	1-6 yrs	1-6 yrs
Revocation	36 months	36 months	36 months	36 months	36 months

\* If the defendant is placed on probation you must impose at least the minimum mandatory period of confinement as a condition of probation. The defendant is eligible to receive good time under Sec. 302.43. See Sec. 973.09(1)(d)

\*\* If a prison sentence is given, the maximum period of initial confinement is three years. The maximum period of extended supervision is three years. The maximum period a defendant may be placed on probation is three years.

**Aggravating Factors**

<b>Bac Level</b>	<b>.02 to .079</b>	<b>.08 - .169</b>	<b>.17 - .199</b>	<b>.20 to .249</b>	<b>.25 and above or refusal</b>
Fine	1500.00	1700.00	3400.00	5100.00	6800.00
Penalty Surcharge (25%)	375.00	425.00	850.00	1275.00	1700.00
Jail Surcharge	15.00	17.00	34.00	51.00	68.00
Victim-Witness Surcharge A	65.00	65.00	65.00	65.00	65.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$2,358.00</b>	<b>\$2,610.00</b>	<b>\$4,752.00</b>	<b>\$6,894.00</b>	<b>\$9,036.00</b>
Jail	1-6 yrs	1-6 yrs	1-6 yrs	2-6 yrs	2-6 yrs
Revocation	36 months	36 months	36 months	36 months	36 months

\* If the defendant is placed on probation you must impose at least the minimum mandatory period of confinement as a condition of probation. The defendant is eligible to receive good time under Sec. 302.43. See Sec. 973.09(1)(d)

\*\* If a prison sentence is given, the maximum period of initial confinement is three years. The maximum period of extended supervision is three years. The maximum period a defendant may be placed on probation is three years.

Revised 8/17/05

### THIRD JUDICIAL DISTRICT OAWI SENTENCING GUIDELINES

#### PENALTY RANGES PER STATUTE

	<b>1<sup>st</sup> Offense (Alcohol Only) .08&lt;.10</b>	<b>1st Offense</b>	<b>2nd Offense</b>	<b>3rd Offense</b>	<b>4th Offense</b>	<b>5th Offense Or Higher</b>
Fine or Forfeiture	\$150 - 300	\$150 - 300	\$350 - 1100	\$600 - 8000	\$600 – 8000	\$600 - 8000
Penalty Assessment		25%	25%	25%	25%	25%
Jail Assessment		\$10	\$10	1% (\$10 min)	1% (\$10 min)	1% (\$10 min)
Justice Information Service Fee		\$12	none	none	None	none
Court Support Services Fee		\$68	none	none	None	none
Victim-Witness Surcharge A		None	\$40	\$40	\$40	\$65
Victim-Witness Surcharge B		None	\$20	\$20	\$20	\$20
Court Costs		\$25	\$20	\$20	\$20	\$20
Driver Improvement Surcharge		\$355	\$355	\$355	\$355	\$355
Crime Lab.& Drug Assessment		\$8	\$8	\$8	\$8	\$8
Jail Sentence	None	none	5 days to 6 mos.*	30 days to 1 yr*	60 days to 1 yr*	6 mos. to 5 yrs*
Revocation	6-9 months	6-9 months	12-18 months	24-36 months	24-36 months	24-36 months
(No Refusal) Waiting period for occupational license	None	None	60 days**	90 days**	90 days**	90 days**
(Refusal) Waiting period for occupational license	30 days	30 days	90 days**	120 days**	120 days**	120 days**

**\*\*Must complete Alcohol Assessment and be in compliance with drivers safety plan and absolute sobriety during use.**



**OAWI SENTENCING GUIDELINES**  
Third Judicial District

**MUNICIPAL COURT FIRST OFFENSE**

**Mitigating Factors**

<b>Bac Level</b>	<b>.08 &lt; .10 (Alcohol Only)</b>	<b>.08 &lt; .10 (Alcohol &amp; Drug)</b>	<b>.10 to .149</b>	<b>.15 to .199</b>	<b>.20 + above</b>	<b>Refusal</b>
Forfeiture	250.00	150.00	150.00	200.00	250.00	250.00
Penalty Surcharge (25%)		37.50	37.50	50.00	62.50	62.50
Jail Surcharge		10.00	10.00	10.00	10.00	10.00
Court Costs*		\$15 - \$23	\$15 - \$23	\$15 - \$23	\$15 - \$23	\$15 - \$23
Driver Improvement Surcharge		355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge		8.00	8.00	8.00	8.00	8.00
<b>Total Financial From Factoring Court Costs To</b>	<b>\$250.00</b>	<b>\$575.50 \$583.50</b>	<b>\$575.50 \$583.50</b>	<b>\$638.00 \$646.00</b>	<b>\$700.50 \$708.50</b>	<b>\$700.50 \$708.50</b>
Revocation	6 months	6 months	6 months	7 months	8 months	9 months

\* Municipal Court Costs can be established at a rate ranging from \$15 to \$23 if enacted by the municipality.

**Aggravating Factors**

<b>Bac Level</b>	<b>.08 &lt; .10 (Alcohol Only)</b>	<b>.08 &lt; .10 (Alcohol &amp; Drug)</b>	<b>.10 to .149</b>	<b>.15 to .199</b>	<b>.20 + above</b>	<b>Refusal</b>
Forfeiture	300.00	200.00	200.00	250.00	300.00	300.00
Penalty Surcharge (25%)		50.00	50.00	62.50	75.00	75.00
Jail Surcharge		10.00	10.00	10.00	10.00	10.00
Court Costs*		\$15 - \$23	\$15 - \$23	\$15 - \$23	\$15 - \$23	\$15 - \$23
Driver Improvement Surcharge		355.00	355.00	355.00	355.00	355.00
Crime Lab. & Drug Surcharge		8.00	8.00	8.00	8.00	8.00
<b>Total Financial From Factoring Court Costs To</b>	<b>\$300.00</b>	<b>\$638.00 \$646.00</b>	<b>\$638.00 \$646.00</b>	<b>\$700.50 \$708.50</b>	<b>\$763.00 \$771.00</b>	<b>\$763.00 \$771.00</b>
Revocation	7 months	6 months	6 months	7 months	8 months	9 months

\* Municipal Court Costs can be established at a rate ranging from \$15 to \$23 if enacted by the municipality.

**MUNICIPAL COURT  
1ST**

Revised 8/17/2005